

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NUSF-7
on its own motion, seeking to)
review and approve requests for) WAIVER REQUESTS DENIED
modification of the funding) IN PART
calculation for the Nebraska)
Universal Service Fund.) Entered: September 6, 2000

BY THE COMMISSION:

B A C K G R O U N D

On May 18, 1999, the Commission opened this docket to consider requests for additional funding from the Nebraska Universal Service Fund made by a number of rural incumbent local exchange carriers (ILECs). These rural carriers sought a modification of our funding mechanism set forth in C-1628/NUSF.⁽¹⁾ The companies requesting waivers and made parties to this docket consisted of: Arlington Telephone Company; Cambridge Telephone Company; Clarks Telecommunications Company; Cozad Telephone Company; Eastern Nebraska Telephone Company; Glenwood Telephone Membership Corporation; Hartington Telecommunications, Inc.; Hemingford Cooperative Telephone Company; Hershey Cooperative Telephone Company; Keystone-Arthur Telephone Company; Pierce Telephone Company; Stanton Telecom, Inc.; Three River Telco; United Telephone Company of the West d/b/a Sprint; Consolidated Telephone Company; and the Blair Telephone Company.

Shortly thereafter, three additional companies requested to be included in this docket, and, by Commission Order entered May 26, 1999, Curtis Telephone Company, Inc.; Nebraska Central Telephone Company; and Elsie Communications, Inc. were made parties to this docket.

On December 2, 1999, Cozad Telephone Company (Cozad) filed a letter requesting that the Commission permit it to withdraw its waiver request. The Commission granted Cozad's request and an order was entered to that effect on December 7, 1999, thereby removing Cozad from this docket.

A public hearing was held on December 9, 1999, and again on January 11, 2000. Both hearings took place in the Commission hearing room in Lincoln, Nebraska. Each company was given the opportunity to testify in support of its waiver request. In addition, post-hearing briefs were filed and accepted for Commission consideration.

O P I N I O N S A N D F I N D I N G S

The purpose of this order is to address the waiver requests of a number of rural ILECs who made their requests on the basis of "underearnings" only. It was the interpretation of a number of carriers who testified at the hearing that underearnings constituted less than 12 percent rate of return.

Pursuant to Neb. Rev. Stat. § 86-1402 (1999), the purpose of the Nebraska Telecommunications Universal Service Fund Act is to "ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." To that end, and pursuant to the policy determinations announced by the state legislature in Neb. Rev. Stat. § 86-1404 (1999), the function of the Nebraska Universal Service Fund (NUSF) is to provide quality services at affordable rates, access to advanced telecommunications in all regions of the state, and to ensure that consumers in all regions including low-income and those in high-cost rural areas have access to services at rates that are reasonably comparable to rates charged for similar services in non-rural areas. Moreover, the NUSF was created to implement a predictable and competitively neutral mechanism to preserve and advance universal service and encourage the continued development and maintenance of the telecommunications structure. [\(2\)](#)

As set forth in docket C-1628/NUSF, the Commission's Universal Service funding formula requires an adjustment in NUSF support for companies earning over a 12 percent rate of return. Specifically, in terms of the permanent plan, C-1628/NUSF provided:

Rate of return adjustments will be made in the following manner. The actual support for an [Eligible Carrier] with a rate of return no greater than 12 percent over the test period will equal its eligible support. For [Eligible Carriers] earning a rate of return greater than 12 percent over the test period, actual support will be the total eligible support less the reduction in revenue required to lower the rate of return over the test period to 12 percent. [\(3\)](#)

The order made the foregoing applicable to the transition period as well. "Explicit support will be adjusted for rate of return and rate rebalancing in the manner previously discussed." [\(4\)](#)

This language has been used by parties to support the position that the Commission should adjust the rate of return over the test period upward to 12 percent for all companies that are earning below that amount. However, we believe the meaning of the language has been misconstrued by the parties. This language only specifies what the Commission will do in the event carriers earn a rate of return in excess of 12 percent. The 12 percent figure we utilized has never been contemplated by this Commission as a floor in which to raise rates of return for the eligible carriers, nor do we believe the language in our order defines it as such. Moreover, this Commission has never defined the 12 percent figure as a "target" figure. To the contrary, as explicitly stated by the Universal Service Fund Director, the Commission is "not guaranteeing a rate of return the way it is structured." [\(5\)](#) We therefore find the argument by the parties, that through our order in C-1628/NUSF we intended to automatically raise the rates of return of underearning companies to 12 percent, is unfounded. We further find that the purpose of the fund is not to guarantee that carriers will earn a "universal" rate of return and

that companies making less than a 12 percent rate of return are not by virtue of its "underearnings" entitled to be funded to reach that level.

As discussed by a few carriers, one factor in determining the funding requirement for NUSF included requests for additional payments due to underearnings. However, this does not suggest that the Commission intended to raise each carrier's rate of return to 12 percent and we reject such arguments that were made to the contrary. Simply because the Commission has prepared itself for unforeseeable variables in its determination of the fund does not create an entitlement for such support to carriers.

A number of carriers argued that not raising their level of support to 12 percent would be inconsistent with the competitive neutrality requirement. In our view, the competitive neutrality requirement does not demand that every carrier earn a 12 percent rate of return.

Some of the parties further asserted that the use of the Benchmark Cost Proxy Model (BCPM) as it relates to non-rural carriers, serves as a precedent and therefore the Commission should use the same analysis and guarantee a certain rate of return. However, the BCPM is solely based on the long term plan. Moreover, while the BCPM is used to estimate support necessary to fulfill the goals of NUSF, it does not constitute a guaranteed rate of return. This docket, and the waiver requests submitted herein are applicable only to the transition period. We conclude, therefore, that our findings in C-1628/NUSF as it relates to the use of the BCPM is inapplicable in this instance and carries no precedential value for the present waiver requests.

Upon full consideration of the arguments contained within the briefs and testimony presented at the two hearings, we find that waiver requests justified merely on the basis that the company has experienced underearnings shall be denied. Accordingly, the waiver requests of Arlington Telephone Company; Clarks Telecommunications Company; Eastern Nebraska Telephone Company; Blair Telephone Company; Keystone-Arthur Telephone Company; and Pierce Telephone Company should be denied.

We have chosen not to address all the parties in this Order as the nature of the waiver requests should be differentiated. Other parties to this docket will be addressed in a subsequent order by the Commission based on the characterization of the particular waiver request.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the waiver requests submitted for consideration in the above captioned docket by: Arlington Telephone Company; Clarks Telecommunications Company; Eastern Nebraska Telephone Company; Blair Telephone Company; Keystone-Arthur Telephone Company; and Pierce Telephone Company, shall be, and are hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of September, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

1. *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion seeking to conduct and investigation into intrastate access charge reform.* Application No. C-1628, Findings and Conclusions (January 13, 1999)("C-1628/NUSF").
2. Neb. Rev. Stat. § 86-1404 (1999).
3. C-1628/NUSF at 8.
4. Id. at 9
5. *See The Commission on its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund ("NUSF"),* Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 at 53:2-3.

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